

**IN THE DISTRICT COURT OF THE NAVAJO NATION
JUDICIAL DISTRICT OF SHIPROCK, NEW MEXICO**

THE NAVAJO NATION

Plaintiff,

vs.

**DINEH BENALLY, in his personal and
official capacity, NATIVE AMERICAN
AGRICULTURE COMPANY, AND
NAVAJO GOLD COMPANY**

Defendants.

No.: SR-CV-014-2020

COMPLAINT

*Shiprock Court
JUN 12 2020 cb*

Plaintiff the Navajo Nation, a federal recognized Indian tribe, by and through counsel,
states and alleges as follows:

INTRODUCTION

1. Plaintiff the Navajo Nation brings this action to enjoin Defendants Dineh Benally (in both his personal and official capacities,) Native American Agriculture Company, and Navajo Gold Company (collectively, "Defendants") from growing, producing, manufacturing, transporting, licensing, or selling industrial hemp within the boundaries of the Navajo Indian Reservation under Title 17, Controlled Substances, of the Navajo Nation Code.

JURISDICTION AND VENUE

2. Because the events or omissions giving rise to the claims occurred within the exterior boundaries of the Navajo Nation, jurisdiction and venue are proper pursuant to 7 N.N.C. §§ 253(A) and 254(A).

THE PARTIES

3. Plaintiff the Navajo Nation is a sovereign, self-governing, federally-recognized Indian tribe with a reservation located in northeastern Arizona, northwestern New Mexico, and southeastern Utah.

4. Defendant Native American Agriculture Company (NAAC) is a corporation organized and existing under the laws of the State of New Mexico, having its principal place of business and registered agent at Mesa Farm Road, 5th Lane, Shiprock, NM, 87420. On information and belief, NAAC is not registered to conduct business on the Navajo Nation.

5. Defendant Navajo Gold Company is a “wellness” company that makes, markets, and sells a variety of cannabis products with a retail location at Corner of Hwy 491 & Hwy 64, Shiprock, NM, 87420. On information and belief, Defendant Navajo Gold Company has not been incorporated or registered under the laws of any state or the Navajo Nation.

6. Defendant Dineh Benally is a citizen of the Navajo Nation and resides on the Navajo Nation. Defendant Benally is the founder, president, and owner of NAAC, and has exerted a substantial amount of control over significant aspects of the company’s day-to-day operations in Shiprock, NM, and surrounding areas during all relevant time periods.

FACTUAL BACKGROUND

Navajo Hemp Law

7. The Navajo Nation prohibits the possession, production, delivery, or sale of marijuana on the Navajo Reservation and a person found guilty of committing such an act is subject to imprisonment, paying a fine, or both. N.N.C. §§ 391-92.

8. In 2000, the Navajo Nation Council, the governing authority of the Navajo Nation, amended Title 17 of the Navajo Nation Criminal Code to define “marijuana” as “those

cannabis plants that contain an amount equal to or more than 1.4 percent of [tetrahydrocannabinol (“THC”).”

9. Therefore, in 2000, it became a violation of the Navajo Nation Code to possess, produce, deliver, or sell any cannabis plant that contained an amount equal to or more than 1.4 percent of THC on the Navajo reservation.

10. On February 7, 2014, Congress enacted the Agricultural Act of 2014 (the “Farm Bill”), Public Law 13-79, to lower the amount of allowable THC from 1.4 percent to 0.3 percent.

11. In 2018, the Navajo Nation Council followed suit and enacted the Controlled Substance Definition Act of 2018, Navajo Resolution No. CO-75-18, to amend Title 17 of the Navajo Nation Criminal Code to define “marijuana” as “the plant *Cannabis sativa* L. and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of more than three tenths percent (0.3%) on a dry weight basis.” A true and correct copy of the resolution is attached hereto and incorporated herein as Exhibit 1.

12. Navajo Resolution No. CO-75-18 also states that “[t]he enactment of this resolution does not authorize the cultivation, growth possession, development or propagation of industrial hemp until the Navajo Nation creates a regulatory system for industrial hemp and obtains the necessary and applicable permits for industrial hemp.” Exhibit 1 at 3.

13. On June 5, 2019, the Navajo Nation Council passed Navajo Resolution No. CJN-24-19 to authorize a hemp pilot research project between the Navajo Agricultural Products Industry (NAPI) and New Mexico State University (NMSU) under the 2014 Farm Bill. A true and correct copy of the resolution is attached hereto and incorporated herein as Exhibit 2.

14. Except for the hemp pilot research project authorized under Navajo Resolution No. CJN-24-19, the “cultivation, growth, possession, development or propagation of industrial

hemp continue[d] to be prohibited on the Navajo Nation, as established by Council Resolutions CO-75-18 and CJY-54-00, and until such time as the Navajo Nation creates a regulatory system and obtains the necessary and applicable permits for industrial hemp cultivation and production.” Exhibit 2 at 4.

15. The Navajo Nation has not created a regulatory system nor obtained the necessary and applicable permits for industrial hemp cultivation and production, as required by Navajo Resolution Nos. CO-75-18, CJY-54-00, and CJN-24-19.

16. On May 15, 2020, the Navajo Nation Council voted to pass Resolution No. CMY-43-20 to expand the hemp pilot project by five acres and to extend it by one year for the 2020 crop season, and on May 30, 2020, the Navajo Nation President signed it into law. A true and correct copy of the resolution is attached hereto and incorporated herein as Exhibit 3.

17. On May 30, 2020, the Navajo Nation President signed Resolution No. CMY-43-20 into law, but made clear in a letter to Speaker Seth Damon of the Navajo Nation Council that the “Navajo people must keep in mind that the growth, cultivation and marketing of industrial hemp is still unauthorized and can place Navajo farm permits in jeopardy when grown outside of this pilot research project.” Exhibit 3 at 1.

18. Resolution No. CMY-43-20 also states that “[t]he Navajo Nation has *not* adopted a regulatory system for industrial hemp and has *not* authorized the growth, possession, development or propagation of industrial hemp on the Navajo Nation,” and warns that “[f]armers on the Navajo Nation should be aware that industrial hemp was and still is unauthorized on the Navajo Nation and forewarned that the planning of hemp could place their farm permits in jeopardy for growing a banned or unauthorized crop[.]” Exhibit 3 at 3.

19. Consequently, all industrial hemp is prohibited on the Navajo Reservation, and, in addition, any person found in possession or producing, delivering, or selling industrial hemp that contains an amount equal to or more than 0.3 percent of THC is subject to the criminal penalties imposed by the Navajo Nation Code.

The Navajo Nation San Juan River Farm Board

20. The Navajo Nation Council authorized the Resource and Development Committee to create and oversee farm boards on the Navajo Reservation. 3 N.N.C. §§ 61, 68.

21. A farm board is authorized to, in compliance with Navajo law, “review and approve the granting, assignment, reassignment, cancellation, relinquishment, transfer, agriculture leasing and subleasing of agricultural land use permits *with the concurrence* of the Division of Natural Resources and Department of Agriculture.” 3 N.N.C. § 65(A)(1) (emphasis added).

22. A farm board is also authorized to “review and *recommend* approval to the Resources Committee of the Navajo Nation Council of the granting of agricultural land use permits . . . or other matters involving agricultural land or irrigation water management in accordance with applicable laws.” 3 N.N.C. § 65(A)(2) (emphasis added).

23. A farm board is not authorized to issue agricultural land use permits for industrial hemp.

24. In 2008, the Navajo Nation San Juan River Farm Board was established under 3 N.N.C. § 61 and is subject to the laws of the Navajo Nation.

25. The San Juan River Farm Board represents the following chapters: Shiprock, Tse Daa Kaan, Gadii Ahi, San Juan, Nenahnezad, and Upper Fruitland.

26. Defendant Dineh Benally is the president of the San Juan River Farm Board.

27. According to the website of the San Juan River Farm Board, the farm board completed a “successful hemp cultivation pilot program” in 2018 and is developing a full scale hemp cultivation program with hemp derived products” in 2019.¹

28. As a farm board of the Navajo Nation, the San Juan River Farm Board does not have the authority to legalize industrial hemp on the Navajo Reservation, issue or process permits or land use applications related to industrial hemp, or to conduct business transactions with foreign entities on behalf of the Navajo Nation.

Defendants’ Actions Violate the Navajo Hemp Law

Unlawful Possession, Growth, and Distribution of Hemp

29. The Navajo Nation has issued two land use permits to Defendant Dineh Benally located in the Hogback Irrigation Project: the first plot is 14.6 acres and the Plot Number is Area 1, Unit 6 and the second plot is 9.5 acres and the Plot Number is 274.

30. Defendant Dineh Benally has been growing and cultivating industrial hemp, and employs members of the Navajo Nation and non-Native workers to grow and cultivate industrial hemp, on the two land plots described in Paragraph 29.

31. On information and belief, Defendant Dineh Benally has been operating under NAAC to cultivate, grow, develop, and propagate industrial hemp on the Navajo Reservation.

32. On information and belief, Defendants Dineh Benally and NAAC distribute, furnish, and supply industrial hemp to Defendant Navajo Gold Company to distribute, transfer, and sell industrial hemp at Navajo Gold’s retail location in Shiprock, New Mexico, which is located within the exterior boundaries of the Navajo Reservation.

¹ Navajo Nation San Juan River Farm Board, <https://www.navajonationfarmboard.com/cannabis-production> (last visited May 20, 2020).

33. Indeed, according to the website of Defendant Navajo Gold Company, “Navajo Gold is a Premium Cannabis Company, developed by Aqueous Sciences in association with the Native American Agricultural Company based on the Sovereign Navajo Nation.”²

34. Defendant Navajo Gold Company is currently selling CBD Tincture, CMD Capsules, Hemp Relief Cream, and Hemp Powder, and is “currently working to expand this line and provide more 100% Organic, locally sourced products.”³

35. Defendant Navajo Gold Company’s website also indicates that it is “NOW OPEN” and selling hemp products at a retail location on the Corner of Hwy 491 & Hwy 64 in Shiprock, New Mexico.

36. On information and belief, Defendant Navajo Gold Company employs members of the Navajo Nation to sell and distribute industrial hemp products on its behalf.

37. On information and belief, Defendants are selling the hemp products described in the above mentioned Paragraph to members of the Navajo Nation and profiting from violating the laws of the Navajo Nation that ban industrial hemp.

Unauthorized Issuance of Hemp Licenses and Permits

38. On information and belief, the San Juan River Farm Board empowered Defendant NAAC to accept and issue hemp and cannabis business applications on behalf of the Navajo Nation.

39. Indeed, the website of the San Juan Farm Board has a direct link to the website of Defendant NAAC, where it states that “We are now accepting Hemp and Cannabis License Applications to own and operate a business on the Navajo Nation” for “cultivation

² Navajo Gold Company, <https://www.navajogold.com/about> (last visited May 20, 2020).

³ Navajo Gold Company, <https://www.shopnavajogold.com/products> (last visited May 20, 2020).

(indoor/outdoor/greenhouse), processing/handler, manufacturing, wholesale & distribution, retail, [and] lab testing.”⁴ A true and correct copy of the “Cannabis License Application Process” provided through this website is attached hereto and incorporated herein as Exhibit 3.

40. NAAC’s website further encourages applicants to contact a representative of NAAC through companies identified as Aqueous International Corp, located at 3800 Howard Hughes Parkway, Suite 1270, Las Vegas, NV, 89169, and Net Zero Group Corp., located in Canada at 5255 Yonge Street, Suite 1200, Toronto, ON M2N 4P9.

41. Aqueous International Corp. and Net Zero Group Corp. are foreign entities that are not registered to conduct business on the Navajo Reservation and do not have lawful agreements to represent or conduct business with the Navajo Nation.

42. The San Juan River Farm Board is subject to the authority of Division of Natural Resources and does not have the authority to legalize industrial hemp on the Navajo Reservation, issue or process permits or land use applications related to hemp, or to conduct business transactions with foreign entities on behalf of the Navajo Nation.

43. Accordingly, Defendant NAAC is violating the laws of the Navajo Nation by unlawfully accepting and/or issuing permits or land use applications for hemp on the Navajo reservation and unjustly enriching itself and the other Defendants.

**First Cause of Action
Unlawful Possession, Growth, and Distribution of Hemp**

44. Plaintiff incorporates by reference Paragraphs 1 through 43 as if fully set forth herein.

⁴ Navajo Nation San Juan Farm Board, <https://www.navajonationfarmboard.com/cannabis-production> (last visited May 20, 2020); Native American Agricultural Company, <https://www.nativeamericanagriculture.com/how-to-apply> (last visited May 9, 2020).

45. Plaintiff has the right to exclusively govern, regulate, and enforce its own laws within the exterior boundaries of the Navajo Reservation.

46. Plaintiff prohibits and does not permit the cultivation, growth, possession, development, and propagation of industrial hemp within the exterior borders of the Navajo Reservation, except for certain exceptions that do not apply here.

47. Defendant Dineh Benally has violated, and is violating, the laws of the Navajo Nation by cultivating, growing, possessing, developing, and propagating industrial hemp within the exterior borders of the Navajo Reservation.

48. Defendant NAAC has violated, and is violating, the laws of the Navajo Nation by cultivating, growing, possessing, developing, and propagating industrial hemp within the exterior borders of the Navajo Reservation.

49. Defendant Navajo Gold Company has violated, and is violating, the laws of the Navajo Nation by distributing and selling industrial hemp within the exterior borders of the Navajo Reservation.

50. Plaintiff has directly suffered, and is continuing to suffer, significant and irreparable harm as a result of Defendants' continuing violations of the Navajo Nation's laws prohibiting industrial hemp within its borders.

51. Plaintiff is entitled to an injunction enjoining Defendants Dineh Benally, NAAC, and Navajo Gold Company from violating Plaintiff's laws prohibiting all types of industrial hemp within the exterior borders of the Navajo Reservation.

**Second Cause of Action
Unauthorized Issuance of Hemp Licenses and Permits**

52. Plaintiff incorporates by reference Paragraphs 1 through 51 as if fully set forth herein.

53. Plaintiff has not delegated any authority to the San Juan River Farm Board, Defendant Dineh Benally, or Defendant NAAC to legalize, authorize, or issue hemp licenses and permits.

54. Defendant Dineh Benally has violated, and is violating, the laws of the Navajo Nation by issuing licenses and permits for industrial hemp for entities to cultivate, grow, possess, develop, or propagate industrial hemp within the exterior borders of the Navajo Reservation.

55. Defendant NAAC has violated, and is violating, the laws of the Navajo Nation by issuing licenses and permits for industrial hemp for entities to cultivate, grow, possess, develop, or propagate industrial hemp within the exterior borders of the Navajo Reservation.

56. Plaintiff has directly suffered, and is continuing to suffer, significant and irreparable harm as a result of Defendants' continuing violations of the Navajo Nation's laws prohibiting industrial hemp within its borders and by unlawfully representing and issuing hemp licenses and permits on the Plaintiff's behalf.

57. Plaintiff is entitled to an injunction enjoining Defendant Dineh Benally and Defendant NAAC from unlawfully representing and issuing or processing hemp licenses, land use applications and permits on the Plaintiff's behalf.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs respectfully request that this Court:

1. Enter a judgement declaring that Defendants have violated Navajo Resolution Nos. CMY-43-20, CO-75-18, CJY-54-00, and CJN-24-19.

2. Preliminarily and permanently enjoin Defendants from illegally cultivating, growing, possessing, transferring, selling, developing or propagating industrial hemp within the exterior borders of the Navajo Reservation.

3. Preliminarily and permanently enjoin Defendants from issuing or processing land use applications related to industrial hemp on Plaintiff's behalf, or in any capacity, and within the exterior borders of the Navajo Reservation.

4. Award Plaintiff its reasonable attorney's fees, costs, and other such relief as the Court deems just and appropriate.

Respectfully submitted this 11th day of June, 2020.



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